

**Draft Minutes
Delta Protection Commission
Thursday, January 22, 2004**

1. Call to Order/Roll Call

Chairman McCarty called the meeting to order at 6:30 p.m.

Present: Chairman McCarty, Vice Chairman Ferguson, Commissioners Beltran, Calone, Coglianesse, Johnson, Kelly, Ornellas, Sanders, Shaffer, Sturm, van Loben Sels, and Wilson.

Absent: Commissioners Cabaldon, Curtis, Forney, Glover, McGowan, and Nottoli.

2. Public Comment

There were no public comments.

3. Minutes of the Last Meeting

Commissioners Johnson and Kelly asked that typos be corrected on several pages of the minutes. Commissioner Calone moved approval of the minutes with changes; Commissioner Kelly seconded. The minutes were approved by voice vote. Commissioners Coglianesse, Ornellas, and van Loben Sels abstained.

4. Chairman's Report

Chairman McCarty said the next meeting of the Delta Protection Commission is scheduled for Thursday, March 25, 2004.

He announced that Governor Schwarzenegger has appointed former Commissioner Ryan Broddrick as the new Director of the Department of Fish and Game. He directed staff to send Mr. Broddrick a congratulatory note on behalf of the Commission.

He said that agenda item #10, regarding possible locations for the proposed Freeport intake, has been removed from the meeting agenda; it may be heard at a future meeting.

5. Commissioner Comments/Announcements

Commissioner Johnson reported that the Dept. of Boating and Waterways' (DBW) proposed budget for 2004-2005 includes \$6.5 million for its aquatic weed control programs: \$5 million for egeria densa and \$1.5 million for water hyacinth. He added that as part of a recent budget exercise, the California Performance Institute issued a report in which it suggests a consolidation of State agencies into seven departments. He circulated copies of the report.

Commissioner Beltran responded to an article from the *Sacramento Bee* that was circulated at the meeting, in which Bill Jennings, DeltaKeeper, said that local governments have a hard time telling developers no [relating to urban development in and around the Delta]. He said this generalization is wrong; the San Joaquin Council of

Governments (SJCOG) has been very proactive in making sure the Delta continues to meet environmental standards, and that developers address all issues accordingly.

Commissioner Coglianese reported that the Bay-Delta Public Advisory Committee (BDPAC) to the California Bay-Delta Authority (CBDA) is going to be co-sponsoring, with the Resources Agency, a workshop on Delta levees. This workshop is tentatively scheduled for late February or early March. The goal is to inform the broader community about the Levees Subcommittees and about strategic planning for the future.

Commissioner Shaffer announced that staff from the CA Dept. of Food and Agriculture (CDFA), the Delta Protection Commission, and Natural Resources Conservation Service (NRCS) are co-sponsoring a workshop for Delta landowners on funding opportunities for conservation measures under various Farm Bill programs. The tentative date is March 5, 2004, at the UC Extension office in Stockton.

Commissioner Kelly noted that at the last Commission meeting, she stated that the South Delta Improvement Program's draft environmental document would be released in January 2004; it now looks as though the document won't be released until March.

6. Attorney General's Report

Dan Siegel gave the Commission a brief update on CALFED litigation. A number of lawsuits were filed in September 2000 in State and federal court by various parties challenging CALFED's CEQA and NEPA environmental documentation. The Commission had been named as a defendant in one of the State lawsuits; this lawsuit was eventually dismissed. However, since the last Commission meeting, the federal case instituted by the California Farm Bureau Federation has been amended to add several more State agencies as defendants; the Commission (specifically, Executive Director Aramburu) is now included on this list of defendants. (In federal court, one is not allowed to sue a State agency, but may sue a State officer.) The Farm Bureau is seeking an injunction for implementation of the federal Record of Decision.

7. Executive Director's Report

Ms Aramburu announced that the Secretary for Resources submitted the report on the Commission to the Legislature as required by last year's budget bill, so the Commission has received the remaining half of its budget for this fiscal year. She also distributed the proposed Governor's budget for the Commission in 2004-2005; the Governor is recommending funding at the same level (\$301,000).

Ms Aramburu noted that the *Sacramento Bee* article to which Commissioner Beltran referred earlier, the Governor's proposed 2004-2005 budget for the Commission, a revised draft letter to the Governor regarding reappointment of Patrick Johnston as the Delta representative on the CBDA, and several letters relating to the future of the Commission were circulated at the meeting.

Ms Aramburu reported on several activities undertaken since the last meeting:

- Met with the head of the State LAFCO Association to continue outreach to other entities in the region, and has been assembling up-to-date data on existing city limits and spheres of influence in and around the Delta Primary Zone.
- Met with Ed Thompson, interim director for American Farmland Trust (AFT) in California, regarding the study on Delta agriculture that began last year. In light of a large fiscal setback and significant reductions in staff, the Delta agriculture study is currently on hold.
- Spoke to staff of the Natural Heritage Institute (NHI), who is applying for funds to set up a Delta Alliance of non-profits to engage in regional issues and broaden the parties and groups involved in discussion of Delta issues.
- Met with CDFA and NRCS staff to set up a workshop to familiarize Delta farmers with federal Farm Bill programs that promote enhancement of habitat values on privately-owned lands. The workshop is scheduled for the first week in March.
- Attended a budget briefing with all Resources Agencies, and heard how many agencies have been impacted by the budget crisis.

Ms Aramburu updated the Commission on the status of the lawsuit that Marin County and the State of California brought against the San Rafael Rock Quarry. The Commission sent a letter to inform people of the unique resources that the quarry provides for the long-term maintenance of Delta levees. The judge has rendered a decision upholding the quarry's right to continue its operations.

8. CALFED Activities and Projects

Ms Aramburu said that Ron Ott, CBDA's Delta Coordinator, drafted a Delta Water Profile. The Commission's CALFED Committee will begin reviewing the document at its February 4, 2004 meeting.

Mr. Ott noted that his handout lists upcoming meetings. He called attention to the CBDA meeting scheduled for February 11, 2004, where the major topics of discussion will be 2004 priorities for implementation, the Delta improvements package, and integrated regional water management plans.

CBDA is working with the Dept. of Water Resources, the Commission, and its CALFED Committee to develop a regional profile for the Delta; a draft of this document would be mailed out to the CALFED Committee the next day in anticipation of its February 4, 2004 meeting. The Delta Regional Profile will address how the four main CBDA programs (ecosystem restoration, water quality, water supply, and levee stability) fit with the Commission's objectives for the environment, recreation, and agriculture. He anticipates this integrated Delta Regional Profile will take a year to complete.

The Ecosystem Restoration Program's (ERP) Science Board met in November, and came up with a process for vetting ecosystem restoration priorities for the Delta. Their proposal will be reviewed by CBDA's Independent Science Board at the end of January.

An Integrated Water Operations Framework Forum (IWOFF) has been convened. Under this forum, CBDA agencies are discussing a long-term Environmental Water Account,

long-term water contract renewals, South Delta Improvements, the Operations Criteria and Plan, and the biological opinions associated with all of these. The status of this process and schedule will be discussed at the February 11 CBDA meeting.

CBDA's Science program is convening workshops to discuss the state of knowledge about the Delta. A Contaminant Stressors workshop is scheduled for February 4, and a Suisun Marsh workshop is scheduled for March 12. Also, on the Science Program's website are reports on CALSIM II, the Environmental Water Account, and Battle Creek restoration.

The South Delta Fish Facilities forum met in December; there was a big turnout, particularly from recreational fishing interests. The group discussed fish facility research needs of U.S. Bureau of Reclamation (Tracy Fish Test Facility) and UC Davis. The group will meet again in late February to discuss the evaluation of these proposals.

The feasibility report on In-Delta Storage is complete. Management is discussing the schedule for public release of the document.

CBDA's Independent Review Panel will be meeting on February 24, 2004, in Sacramento, to discuss long-term financing for the program.

Ms Aramburu reported that the CBDA's Delta Levees program is conducting a seismic risk assessment for Delta levees. Early reports have been released and are available: a Delta Levees Risk Analysis, establishing what the products of this effort will be; and the first technical memo, which is an initial technical modeling of levee breaches. Mr. Ott said that this information could help determine which islands' levees should be analyzed in more detail. Chairman McCarty said that the Commission has historically taken the position that all of the islands are equally important, and it would be very difficult to set a priority on which islands should be addressed first. He asked if this analysis is meant to assist in a prioritization process. Mr. Ott said the reports yield the technical data that could be used to prioritize projects.

9. Consider Sending a Letter To Governor Schwarzenegger Regarding Reappointment of Patrick Johnston as the Delta Regional Representative on the California Bay Delta Authority

Chairman McCarty said the 19-member CBDA has five regional representatives appointed by the Governor; Patrick Johnston was appointed to a one-year term as the representative of the Delta region. Staff recommends that the Commission send a letter to Governor Schwarzenegger asking that he reappoint Mr. Johnston as the representative of the Delta region. Mr. Johnston has participated on the CBDA, has critical knowledge and understanding of Delta issues, has the ability to communicate with different interests in the Delta region, and has indicated his interest in being reappointed to the CBDA.

Ms Aramburu noted that a revised draft letter was circulated at the meeting.

Commissioner Beltran said he feels a letter should be sent to the Governor requesting appointment of a Delta representative from a qualified pool of people that use the Delta and live in the Primary Zone. He recommended demonstrating to the Governor that the Commission is not opposed to change, including a change in representation on the CBDA.

Commissioner Coglianese said that as a member of the CBDA's BDPAC, she has had the opportunity to interact with Mr. Johnston for the first time. She found him to be extremely committed to the protection of the Delta and knowledgeable on all issues the Commission discusses. Having seen the members of the CBDA interact, she feels his voice is respected, and thinks the Commission needs someone of his credibility and stature to represent the Delta.

Commissioner Johnson concurred with Commissioner Coglianese, and said that in his capacity of working with legislation for DBW, he worked on bills with Mr. Johnston during his Assembly and Senate terms. He said Mr. Johnston was one of the most effective legislators he worked with.

Commissioner Sanders said he believes the language in the revised draft circulated at the meeting addresses the opinions of both Commissioners Beltran and Coglianese. Specifically, the letter asks the Governor to consider Mr. Johnston for reappointment based on the qualifications that Commissioner Coglianese noted, but it is not as direct as the original version, so the tone is more respectful of the Governor's choice, per Commissioner Beltran's concerns.

Commissioner van Loben Sels said he thinks the Commission was fortunate to have Mr. Johnston testify at Senator Machado's hearing in November on the future of the Commission. He agreed that Mr. Johnston has tremendous knowledge and understanding of the workings and conflicts of the Delta. He recommended sending the revised letter.

Commissioner Johnson made the motion to send the revised letter to the Governor; Commissioner Calone seconded the motion. The motion was approved by voice vote.

11. Evaluation of City of Rio Vista's Proposed Sewage Treatment Plant Under Utilities and Infrastructure Policy P-3 [Primary Zone]

Chairman McCarty reported that the City of Rio Vista has submitted a revised sewage treatment plant proposal, and has asked the Commission to determine whether the new proposal meets the criteria of Policy P-3.

Ms Aramburu said that when the Commission adopted its Land Use Plan, and Utilities and Infrastructure Policy P-3 precluding the construction of new sewage treatment plants in the Primary Zone, it exempted the City of Rio Vista's proposed sewage treatment plant from the policy. It recognized that the City of Rio Vista had already adopted a final environmental document, and that the City had acquired the site (located in the Primary Zone adjacent to the Legal Delta boundary) and expended substantial resources designing and analyzing the proposed plant, prior to the Commission's actions.

She said the City has revised its proposal and released a supplemental environmental document acknowledging the modification of the proposal that was approved in the past. The revised project would serve the same level of development, would be located at the same site, and would serve the same purpose as the original project. Because the City never constructed its plant, it can now take advantage of new technology, which means the plant will actually cover a smaller physical area on the site. The City believes this project is consistent with the Commission's policy, and is asking the Commission to make this finding.

Ms Aramburu noted that Tom Bland, Rio Vista Community Development Director, was available to answer questions on the project.

Commissioner van Loben Sels asked if the effluent from the plant would meet drinking water quality standards. Ms Aramburu said that the Regional Water Quality Control Boards (RWQCB) set water quality standards under their regulatory process. Mr. Bland said that the plant is being designed to meet both the current and anticipated Central Valley RWQCB standards for the next decade. The City does not yet have its permit, but the design engineers are working very closely with the Central Valley RWQCB.

Commissioner van Loben Sels said that the proposed intake at Freeport (agenda item #10, which was removed from consideration on the agenda) proposes to take 185 million gallons of water per day out of the Sacramento River near Freeport. He expressed his hope that any permit for this project would take into account the reduced flows that will reach Rio Vista due to the Freeport project.

Commissioner Beltran asked whether Rio Vista's proposed plant would be a traditional plant, or whether it would involve water being pumped through a membrane diffuser so that the effluent meets Title 22 standards. Mr. Bland answered that the plant would be a membrane bioreactor system with ultraviolet treatment for bacteria; it would utilize state-of-the-art design. The plant is anticipated to meet both current and future RWQCB standards; his engineers have affirmed that this plant would meet Title 22 standards.

Chairman McCarty said the Commission has been asked to find that this proposal meets the requirements of P-3, and asked Mr. Siegel whether there is any problem with the Commission making that finding. Mr. Siegel said that P-3 refers to the Rio Vista project "as described in the final environmental impact report for such project"; someone could argue that this isn't the exact same project as described, however, he feels that the intent of P-3 was to make sure that a bigger, more disruptive project is not being approved. The question for the Commission is whether the revised project is of the same, or a lesser magnitude, in terms of impacts on the Delta, in which case it would meet the spirit of P-3.

Commissioner Wilson said it appears that the revised project would be better than that originally proposed, in terms of impacts on the Delta. He made the motion that the Commission find this project to be in compliance with P-3; Commissioner Beltran seconded. The motion was approved by voice vote; Commissioner Coglianese abstained.

12. Review and Discussion of Budget Process and Report from Secretary of Resources Mike Chrisman to Joint Legislative Budget Committee

Chairman McCarty said that because the report from the Secretary of Resources was submitted to the Joint Budget Committee as required by last year's Budget Bill, the Commission received the second half of its FY 03-04 budget. In addition, the Governor has proposed funding the Commission at the same level in the next fiscal year.

He thanked Secretary Chrisman for submitting the required report, and Dave Widell, Resources Agency staff, who drafted the report in consultation with him and Commissioner Coglianese and worked with Secretary Chrisman to ensure it was submitted on time. He also thanked Commissioner Coglianese, the second member of the special committee appointed to assist in the preparation of the materials for the Secretary's office. Finally, he thanked all the Commissioners and members of the Delta community that participated in the discussions of the Commission and its future, as well as at the November 2003 hearing by the Senate Select Committee on Delta Resources.

Ms Aramburu said that the report would be forwarded to the Legislative Analyst's Office, which will review it for the members of the Legislature. Both Senator Machado's and Assemblymember Wolk's offices have expressed interest in revisiting some of the key aspects of the Commission (e.g., its mandate and membership). She said Mr. Widell confirmed that these are merely suggestions from the Secretary's office; they shouldn't restrict creative discussion and articulation of the Commission's point of view. Ms Aramburu iterated that the report is for information only; no action is required.

13. Consider and Adopt Comments on the Future of the Commission

Chairman McCarty said the Commission should adopt a position on the future of the Commission to forward to Delta Legislators and Secretary Chrisman. He said the numerous comments received in undertaking this exercise should be refined and submitted to Senator Machado and Assemblymember Wolk.

Ms Aramburu explained that the staff report for this agenda item summarizes all of the comments that were made in the numerous forums in which this issue was discussed last year. Within the report, she called out common themes from the various discussions. One issue was whether the Commission should continue (in light of the creation of the new Bay-Delta Authority), and if so, whether it should be an independent State agency. Another issue was whether the Primary Zone boundary should be changed or moved in light of changes over the last ten years; there was general agreement that the boundary should remain where it is. However, some people felt there was an opportunity for the Commission to reflect on changes, and evaluate whether there is a need to address the impacts from this development along the Primary Zone boundary. Another issue that was discussed was the Commission's membership; Commissioners and others generally feel that the current membership has been effective at increasing communication and understanding and developing partnerships, but they are open to considering new representation based on changes in land ownership, for example. The big issue that was discussed was what the Commission might do in the future; this involved taking a look

back to see what activities have been successful, and evaluating how it might become more effective, and what increased funding and/or authority, if any, might be required.

She said she received some feedback on the staff report. Item #10 on page 4 relates to the development of Best Management Practices (BMPs) to enhance the compatibility of Delta agriculture and wildlife habitat, and she's been told that "BMPs" is a regulatory term. In looking at the Commission's Plan, this recommendation relates to the Commission's Agriculture policy P-8, encouraging management of agricultural lands that manage wildlife habitat seasonally, and thus the language would be changed to eliminate the reference to "BMPs". She also received comment letters from the City of Lathrop, the River Islands project on Stewart Tract, and the City of Stockton regarding the Commission's role in the Secondary Zone.

Chairman McCarty said the Commission has spent a lot of time over the last year developing background information for Secretary Chrisman's report. The report contains information, suggestions, and possible outcomes that the Commission hasn't had a chance to review yet; it did not participate in the formulation of the report. He suggested that unless there were major points in the report that Commissioners wanted to discuss, he was soliciting input on the recommendations from those in the audience.

Chairman McCarty opened the public hearing on this item.

Bruce Coleman, Community Development Director and acting Assistant City Manager, City of Lathrop, said that the City is very concerned about the recommendations in the report regarding both the composition and the authority of the Commission. It seems that the Commission is seeking to expand its powers by establishing a buffer zone between the existing Primary and Secondary Zones. It appears that this buffer zone would lie in the Secondary Zone, approaching an area in the City on which a number of entitlements for development projects have already been approved.

Additionally, the Commission is considering expansion of its authority to regulate land uses within the Secondary Zone. The City feels that this authority is not appropriate, since it would usurp the police powers of both cities and counties. The City's growth areas are located within the Secondary Zone by design; when the Delta Protection Act was approved in 1992, the Primary Zone was intended to contain the areas most in need of protection, whereas the Secondary Zone would not be regulated by the Commission so that responsible growth opportunities could be accommodated.

Lathrop's General Plan was adopted in 1991 prior to the adoption of the Delta Protection Act in 1992. That General Plan establishes the land use patterns within the existing City limits as well as the City's sphere of influence area. The City used that General Plan to adopt the West Lathrop Specific Plan in 1996, which then led to the annexation of various Secondary Zone areas into the City. The City used these planning documents to approve a number of development projects that would serve a wide range of socioeconomic classes. Based on those entitlements, the City issued tens of millions of dollars' worth of bonds, which have been utilized to construct extensive new utilities and infrastructure, including a water recycling plant and recycled water distribution systems, new streets, and other infrastructure to accommodate the development. This has

been a significant investment for the City, and it was made within the regulatory framework that was established in 1992. The City believes that to change the ground rules at this time would create an economically and socially devastating situation for the City. A major goal of the City is to provide quality jobs, economic development, and housing that would serve the region; it intends to do this in an environmentally sensitive way, and it's demonstrated that on a number of projects it's approved already. The City feels that it has played by the rules that were established by the Commission, and therefore opposes any proposed restrictions on local land use authority in the Secondary Zone. Commission staff has received a copy of a letter Lathrop's Mayor Gloryanna Rhodes provided to Senator Machado on the issue.

Commissioner Coglianesi said she's not clear on whether the City's opposition is due to the reliance on the its existing General Plan or if it's a more deep, philosophical position; Mr. Coleman responded that the City's position is that local government has the authority and police powers over land use in the Secondary Zone, and that that should continue.

Commissioner van Loben Sels asked if 100% of the lands within the Secondary Zone that were included in Lathrop's General Plan were slated for development in that document, or whether there were some areas that hadn't been planned for. Mr. Coleman said the document covered areas that are both within the City limits as well as areas in its sphere of influence, and as far as he knows, the lands within both of these were planned for development.

Kevin Sherrar, Executive Director of the Building Industry Association (BIA) of the Delta, said that when the Act was being formulated in 1992, the development community was involved in determining the scope and parameters of the Act. The specific authority of the Commission was to remain solely in the Primary Zone, and authority and actions within the Secondary Zone were to be in an advisory capacity only. Consequently, the development community relied on this scope of authority when it lent its support to the legislation in 1992, the end result being that the Commission would leave development in the Secondary Zone to the discretion of local government. As the development community has reviewed the actions and issues listed in the staff report, it has noticed a strong divergence from the original Act, on which it has been relying for the past ten years.

Since 1993, there has been a significant amount of investment in the Secondary Zone, not only by developers, but also by cities and counties. He asked if the Commission or the State is prepared to provide just compensation, and whether it is prepared to throw the economy of Northern California into a state of chaos by asking cities to amend their General Plans to exclude the Secondary Zone. The Secondary Zone was to be under the jurisdiction of local government, and should remain as such.

There appears to be an assumption that development in the Secondary Zone affects the Primary Zone, yet the development community has not seen any conclusive data to substantiate this.

Relative to the issue of exploring to be a responsible agency under CEQA, the industry is concerned that that would require yet another approval before it could provide much-needed housing in San Joaquin County.

Also, he questioned whether it would be productive for the Commission to evaluate water tables and systems in the Legal Delta, given all the other agencies and entities with authority over these. (As an aside, the list refers to the “Legal Delta” a number of times, but he couldn’t find that term defined in the 1992 legislation, so he doesn’t understand the definition or the origin of the term.)

The original discussion of the Act involved a lot of dialogue over the placement of the line separating the Primary and Secondary Zones; paramount to those discussions was that existing rivers and streams would act as natural buffers, and the line was determined accordingly.

Some of the actions and programs listed in the report, such as a permanent easement program for the Primary Zone, would require new funding; with the Commission’s limited funding and the State’s fiscal crisis, it appears that the Commission is going for the “low-hanging fruit” (developers) to fund this. Specifically, one of the items is to “report to the Legislature on other possible sources of funds, including mitigation fees collected by local government, for development in the Secondary Zone, and to be passed on to the Commission.” The BIA of the Delta does not believe a legal nexus exists to acquire Secondary Zone development fees to pay for buffer zones, mitigation banks, or any other activities in the Primary Zone. In conclusion, BIA of the Delta asked that the Commission remain true to the original scope and spirit of the Act, and that its recommendations on the future of the Commission reflect the same.

Susan del Osso, Project Director for the River Islands at Lathrop project, acknowledged that the Commission has discussed this project in the past, and apologized that she had not come before the Commission before now to discuss it. She has met with Ms Aramburu a number of times to discuss the project. She noted that she circulated a letter that states her position and outlines some of the benefits of the River Islands project. She believes many of the Commission’s concerns have been incorporated into the project, specifically as they relate to natural, and self-imposed, buffer areas.

The project was identified in the City of Lathrop’s General Plan in 1991. When the Commission was formed in 1992, there was a lot of discussion that resulted in Stewart Tract being eliminated from inclusion in the Primary Zone. With the extensive development proposed under this project, there are a number of approvals the proponents need to obtain, and they have mapped out that process very carefully. They have spent about \$75 million purchasing the acreage for the project, and just last year issued about \$30 million of bonds to purchase water and sewer rights. In those bond issues, they explained the approval process to the bondholders, so any change in that process now would create a huge problem for them.

Staff has submitted several letters on the project, and the City’s independent EIR consultant has addressed all of the considerations raised in those letters. Also, as noted in the staff report associated with agenda item #14, there have been no problems in the Primary Zone yet, so the Commission appears to be operating fairly effectively at what it was intended to do. The proponents respectfully request that the Commission leave the jurisdiction of Secondary Zone areas to local government. She offered to return to the Commission to discuss the project further.

Commissioner Beltran said that the proponents have addressed the floodplain issues associated with this project voluntarily, and asked what is planned for the levees to restore the Delta to its original state. Ms del Osso said that the project's levees would be a minimum of 300' wide, and levees along Paradise Cut, Old River, and the San Joaquin River would be set back. On those levees, an extensive amount of ecosystem restoration, specifically the creation of shaded riverine aquatic habitat, would occur. This restoration would result in an extra buffer area, in addition to Old River, to the Primary Zone.

Commissioner Beltran asked how many acres of habitat will be created in perpetuity as part of this project. Ms del Osso answered 1,000 acres, of which 350 are currently in agricultural production. By setting back the levees, they're expanding the capacity of nearby flood bypass by 300 acres. In total, there's about 300 acres set aside as mitigation land, and the project also includes lakes and additional open space for development of recreational opportunities. In all, about 20% of the project site will be set aside as mitigation. She verified Commissioner Beltran's assertion that no houses have been built to date.

Commissioner Beltran referred again to the *Sacramento Bee* newspaper article, and said that it's difficult to turn down responsible development projects that self-impose additional restrictions on themselves, as is the case here. Ms del Osso verified that the City of Lathrop's review process has resulted in a responsible, environmentally sound project.

Dave Stagnaro, City of Stockton, read a letter from Stockton Mayor Gary Podesto. The letter expresses concern regarding the proposed study for the Secondary Zone (the western portion of Stockton is located in the Secondary Zone). The City concurs with the Commission's view of the importance of establishing transitions between urban uses and the Primary Zone. However, the Commission should not seek to create another California Coastal Commission-type layer of government that would infringe upon local land use authority. He asked that the Commission take into account the proper jurisdiction of the City of Stockton to control its future development in accordance with current and future needs. The City is currently updating its General Plan; as it does this, it will solicit input from the Commission on the appropriate conceptual policy language that can be included in the document to address Primary Zone protection needs.

Commissioner Beltran asked how far the Secondary Zone goes into downtown Stockton. Mr. Stagnaro replied that the location of his job near City Hall is right on the Primary Zone boundary.

Commissioner Beltran also asked whether the activities that have been undertaken in downtown Stockton in the last twelve years have yielded improvements; Mr. Stagnaro verified that Stockton has been revitalized by new projects implemented over that time frame.

Commissioner Beltran noted that Stockton has recreational enhancements planned for its waterfront area, and asked if another layer of government could hurt those projects. Mr.

Stagnaro agreed that adding another bureaucratic process could restrain the implementation of good projects.

Commissioner Coglianese asked how many residential units have been built in the Secondary Zone in Stockton over the last ten years. Mr. Stagnaro answered that among the three major developments in the Secondary Zone (Brookside, Spanos Park, and Weston Ranch), about 3,000 to 3,500 homes have been built. Commissioner Coglianese asked if more homes were planned; Mr. Stagnaro answered in the affirmative. He said the City would have a better idea of what the revised map and land use designations would be in about a year, once its General Plan update has been completed.

Commissioner Wilson asked if the 3,000 to 3,500 homes are at or close to sea level in elevation, behind levees; Mr. Stagnaro answered in the affirmative.

Commissioner Sanders asked for a characterization of the geographic direction of the planned development in Stockton (i.e., whether it would move toward the Primary Zone, or south of the City out of the Secondary Zone). Mr. Stagnaro said the City is currently in the process of finalizing its background report; it has not yet gotten to the mapping stage. No decisions have been made on the direction in which the City will go nor the land use designations.

Commissioner Ornellas asked if the Port of Stockton is in the Secondary Zone; Mr. Stagnaro answered in the affirmative.

Commissioner Shaffer asked whether agricultural resources would be considered in the General Plan update. Mr. Stagnaro answered in the affirmative, and said that agricultural resources are also addressed in its current General Plan. Like many communities in the area, Stockton has adopted a right-to-farm ordinance that seeks to protect existing agricultural operations from the effects of urbanization as much as possible.

Chairman McCarty said much like Sacramento and West Sacramento, large portions of the central area of Stockton lie in the Legal Delta. Much of these cities' Secondary Zone areas are already fully urbanized. The Commission is looking at surrounding city boundaries with current eyes, not historical eyes.

Jerry Robinson, Central Delta Water Agency, said he was involved in the San Joaquin County Farm Bureau when Senator Johnston raised the idea to develop a Commission that would act to protect the Delta. This concept was not immediately endorsed, because agricultural interests in the area saw it as a taking of land without compensation and a loss of landowner rights, but they supported the idea because they wanted to protect the Delta as it existed in 1992. The cities agreed to the concept because their spheres of influence in the Secondary Zone were to be left for them to develop the best way they could; they would never have done so if they knew this issue would resurface twelve years later. He said the Commission should stay out of the Secondary Zone, especially in the areas from Stockton west through Tracy, because this is really the growth area of Northern California, and will continue to be that. The State's population is continuing to

grow, and advocating less development or “no growth” will not change this; it will just push people into other areas.

He said the Commission is looking at land use, but it should also be addressing a diminishing supply of good quality water in the Delta, such as whether 8,500 cfs (and eventually 10,300 cfs, the full capacity of the State Water Project) should be pumped from the Delta, as is being pursued under the CALFED program.

John Gamper, California Farm Bureau Federation, said he provided some feedback to Ms Aramburu on some points in the staff report that were troubling to him. He said the second biggest fight on the legislation that created the Commission was over the membership of the Commission. He said the Federation respectfully disagrees with Secretary Chrisman’s recommendation to change the Commission’s membership. He said the Commission has worked well with its current configuration, and there’s no need to “fix” it, although it recognizes the changes in land ownership in the Delta and is not opposed to “tweaking” the membership to reflect those changes. He said he doesn’t understand where the suggestion to eliminate State agency seats came from; part of the benefit of the Commission is having those agencies participate and share ideas in a voting capacity.

He thinks the Commission would be remiss in its responsibilities if it did not evaluate the impacts of development in the Secondary Zone on the Primary Zone. The Federation has supported innovative ideas for funding conservation easements; one way to do that in these tight fiscal times is to look at establishing a mitigation bank to balance the windfall and wipeout that occurs in the development process.

Pete Rabbon, General Manager, State Reclamation Board said the Board has publicly expressed concern about Delta urbanization. He said there are issues and concerns about water supply, recreation, and agriculture, all of which are symptoms of the urbanization of the Delta. The Board has met with the past Resources Agency Secretary, various agencies within the Resources Agency, CBDA’s Executive Director, and the Governor’s Office of Planning and Research to discuss the issue. It has come to the conclusion that there is not a single State agency that is addressing the urbanization of the Delta and all of the associated issues people are concerned about. At the end of 2003, the Board started planning a public workshop, to be co-sponsored by the Commission, to discuss the issue of Delta urbanization and the issues surrounding it; with the change in administration, this was delayed. The Board has been pleased to see that this issue is getting to the point of serious discussion, and he has asked Ms Aramburu to brief the Board on the Delta urbanization issue at its February 20 meeting.

Ms Coglianese asked Mr. Rabbon to elaborate on the nature of the Board’s concern about urbanization. Mr. Rabbon answered that the Board’s mission is flood control, and it is basic knowledge that living behind a levee is a bad idea; it’s not sound floodplain management. Anywhere one lives in the Delta, one is behind a levee, so from a flood control perspective, the Board’s concern is clear. But there are other issues that come with increased populations to expanding urban areas: impacts to recreation, water quality and supply, air quality, and transportation (some of the worst transportation corridors in the State are on the periphery of the Delta). The Commission should be looking at these

issues long-term, and this is a great opportunity to proactively do this, rather than trying to address the problems as they are created. The Board feels this is a State issue that needs to be addressed.

Bill Geyer, member of the public, said he is the Executive Director of the Resource Landowners Coalition, a Statewide organization that promotes rewarding, rather than punishing, landowner stewardship. He said there are number of members who have property in the coastal zone, and one of their long-standing battles has been with the constant and varied efforts of the Coastal Commission to expand its regulatory jurisdiction outside of its current and historic boundaries. The organization and its members have, however, been supportive of the Coastal Conservancy, which implements landowner incentive programs to resolve issues in the coastal zone. The Conservancy also implements these incentive programs outside of the coastal zone to address related resource issues that have direct and indirect impacts on the coastal zone. He understands that the Coastal Conservancy's jurisdiction currently extends into the Delta. He said Senator Machado had introduced a bill to have the Conservancy administer a program for the Delta; he recommended the Commission consider this as a way to maximize its programmatic interest and responsibilities as they relate to the Secondary Zone.

Chairman McCarty closed the public hearing.

Commissioner van Loben Sels asked Mr. Siegel to advise the Commission on how to proceed with the Legislature's direction to the Commission to consider potential changes in the Secondary Zone in light of local governments carrying out plans that were adopted before the Commission was created. Mr. Siegel said that only the Legislature has the power to change the Commission's authority, and essentially the land use, in the areas in question, regardless of whether the areas were included in a planning document prior to the creation of the Commission. If the Legislature chooses to give the Commission authority over the Secondary Zone, and that authority includes the power to alter current land uses that exist in General Plans, then the Commission would have that authority.

Commissioner Sanders clarified that if the Commission was granted more powers by the Legislature, those powers would be exercised from the effective date of the legislation; anything approved by a city ten years before would not necessarily be affected, particularly if it were implemented in full before the new legislation became effective. Mr. Siegel said this is a complex issue that relates to when a "vested right" is attached to a project. If a project approved prior to the implementation of new restrictions by the Commission had reached a certain point at which, under State law, there is a vested right to continue that project, then the Commission would not have the authority to stop it, or would have to compensate the landowner for stopping it.

Chairman McCarty said that in the exercise undertaken in the last year evaluating the Commission, everything was thrown on the table. He feels the Commission tried to protect the ability to decide its own fate by taking a critical introspective look at itself to ask whether it's done a good job, whether there is still a need, and what needs to be changed. He said Mr. Gamper raised a good point; there is always an opportunity to

“tweak” something to make it better, and that’s the conclusion of the comments that have been raised to date, absent the recent report from the Secretary of Resources.

He said the report has suggested some wholesale changes to the membership that is not reflective of what the Commission itself nor its constituencies have proposed. No one disagrees with the Commission’s position that the Primary Zone needs to be preserved, protected, enhanced, and maintained. If the Commission is going to do that, it needs to look over the fence at potential impacts that might strike from the outside; that’s where the Secondary Zone issues have arisen. The Secondary Zone has afforded the Commission the luxury of a natural buffer, but that buffer is now eroding, and will be gone in the near future, not only in Stockton and Lathrop, but around the entire Delta. The Commission must, in the spirit of stewardship, give landowners a reasonable alternative to urbanization of their property, if that’s what they desire. He doesn’t know how this would be funded, but it must be considered; all the Commission has done to date is consider alternatives, taking a look at the forces that are impacting the Delta today that were not necessarily present in the same magnitude twelve years ago.

He said the positions the Commission has advanced to those evaluating it have been reasonable, well thought-out, and well regarded. The Commission does a good job of representing the constituencies that comprise the Primary Zone of the Delta. This representation is not as great in the Secondary Zone, but the Commission includes seats for mayors and other city representatives, as well as County Supervisors, that make it more sensitive to Secondary Zone issues. The input the Commission has received is very helpful, and is a different point of view than what has been heard before. These comments will be summarized and included with the input already collected. He suggested that staff continue to refine the feedback through the two-member committee that has been set up to forward this information to the appropriate parties.

Commissioner Coglianesse said that local land use is one of the powers that local government officials guard jealously. When she testified at Senator Machado’s hearing, he asked whether there was a role for the cities sitting on the Commission, and whether they could think more broadly about the land use issue in their roles as Commissioners; she answered that she thought they could. As a local elected official, she sits on a number of regional bodies that have different jurisdictional lines and responsibilities than her city. Officials are increasingly recognizing the need to voluntarily meet on issues that overlap their city and county lines. She thinks the debate over the last year is really about the future of the Delta, and the value of the Commission is that it brings together the different regions that affect the Delta. As a local elected official who understands the concerns about the land use issue, she asked if there was something special about the Delta that should encourage everyone to think more broadly. Enough concerns have been raised that the Commission should re-examine the state of the Delta ten years after the Commission’s creation, and see if the existing law is sufficient to deal with changed circumstances. Whatever develops with respect to the statute that governs the Commission will be the result of an open political process, in which everyone will be involved. When the Commission convenes meetings about this topic, it needs as much input as possible. She suggested that the Commission convene a special February meeting, and make an effort to get some of the other locally elected Commissioners to attend, so that it could have a fuller discussion.

Commissioner Beltran said he disagreed with the generalization made by Mr. Jennings in the *Sacramento Bee* article that local governments aren't responsible, because he has stood up to developers proposing irresponsible projects. He doesn't trust the State, and is opposed to further empowering the State and adding another layer of government to local land use decisions. He thinks the Commission has an important role in the Primary Zone, but the exercise of re-evaluating the Commission was just a reaction to Assemblymember Wolk's attempts to disband it. He said that in San Joaquin County, local governments work as a regional unit through the COG, the BIA, the unions, and other partnerships. Trying to limit growth that will occur anyway by making it more difficult to approve environmentally responsible development projects affects people's livelihoods as well as the larger economy. He recommended that the Commission stay the course, and continue protecting Primary Zone resources.

Commissioner van Loben Sels said there are items in the Secretary's report that reflect a lack of information. He voiced his disagreement with the suggestion to remove the State agency representatives as voting members of the Commission. He has often heard that the Commission has been effective as a forum where Delta issues are openly discussed and usually reaches unanimous decisions; removing members with expertise would be a setback. He said that, per previous discussions regarding the increasing ownership of Delta lands by non-profit organizations, the membership could be modified slightly to reflect that. He suggested forwarding the recommendation that the membership be increased from nineteen to twenty, with a new seat for a non-profit entity representing the environmental community.

Chairman McCarty said there's no problem with forwarding this recommendation, but the lists and reports under consideration are a compilation of ideas and thoughts that the Commission as a body is still trying to synthesize. The Legislature will proceed at its own will, with respect to whether it decides to take another look at the Commission, and if so, how membership might change; the Commission would just be another party that could weigh in during that process.

Commissioner van Loben Sels asked if a February meeting gives the Commission enough time to provide recommendations regarding its future to the Delta Legislators and Secretary Chrisman. Chairman McCarty said he personally doesn't see a significant change happening anytime soon in terms of legislation. He doesn't feel that there is a mindset to make wholesale changes to the existing legislation, nor does he see a will to empower the Commission with significantly more authority, in the near future, because the Legislature has higher priority issues at this time.

Commissioner Johnson said that when a bill is introduced, a Committee hearing cannot be held until 30 days after the introduction date, and the Legislative session runs through August/September, so there should be adequate time during that process for Commission input.

Commissioner Wilson said he is concerned that the report was written in a vacuum without any Commission input. Chairman McCarty said the Commission provided background information for the report, but the conclusions are from the Secretary's Office.

Commissioner Coglianese noted that the earlier report from the Legislative Analyst's Office report was far less appreciative of the Commission, so considerable effort was undertaken to provide extensive factual information to the Resources Agency. The fact that this new report advocates the continued existence of the Commission, and that it has received the rest of its budget, is an indicator of success. The Commission now needs to integrate this information and give direction to the Chairman to forward a unified position to the Legislators who have requested it. The Commission must digest all of the important public testimony it received, and ensure that key members absent from the meeting weigh in on the issue. She asked that the Commission consider holding a February meeting to focus all this information to some key questions, and come up with a product at the end of that meeting.

Commissioner Kelly said the Commission needs to respond to the report. She feels the big hot button issues are the new membership and the idea of establishing a buffer zone. She noted another recommendation that she did not want to see lost in the shuffle, that the Commission become more engaged in the orderly planning of communities within the Delta, particularly with respect to historic preservation of Delta communities. She agreed that the report is supportive of the Commission and recognizes the need for a regional body in the Primary Zone.

Commissioner Beltran made the motion to recommend to Senator Machado and Assemblymember Wolk that the Commission stay its original course, and reexamine this issue, with their input and participation, at the next budget cycle. Commissioner Ornellas seconded the motion.

Commissioner Kelly voiced concern that if that approach is taken, the Commission will be in a defensive position, and will have in essence cut off the dialogue underway. Commissioner Beltran clarified that the next budget cycle is a year from now. Commissioner Kelly responded she still has an issue with putting off the discussion.

Commissioner Coglianese said the Legislators have asked the Commission for comments.

Commissioner Calone agreed that the Commission should not put this off; it needs to maintain the dialogue, and articulate to the Legislators what it feels is in the best interest of the Delta.

Commissioner Beltran amended his motion to recommend to Senator Machado and Assemblymember Wolk that the Commission stay its original course, and reexamine this issue, with their input and participation, at the next Commission meeting, where the discussion can continue and they can get a true representation of what the Delta feels. He

said it seems the other Commissioners' issue with his original motion is that they don't want to see the dialogue delayed. His issue is that he doesn't want the two-member committee to suggest recommendations on behalf of the Commission. Commissioner Ornellas agreed to the amended motion.

Chairman McCarty clarified that the Commissioners are confused by the "stay the course, but come and talk" nature of the motion; it's contradictory. He said the Commission should continue this dialogue at a February meeting, at which point it can finalize a firm position, which may or may not be "stay the course". Commissioner Beltran said the Legislators are not clear on what they want, so in the absence of clear direction, he thinks the Commission should stay its course; on the other hand, if these Legislators tell the Commission what they want, he'd be open to hearing their ideas. Chairman McCarty said the Commission's already taken positions on some tweaking, that were collectively agreed to, and some of that can be done without changing the Commission's course.

Commissioner van Loben Sels said he senses the Commission is on thin ice, that it needs to press forward and show some changes. If it stays engaged, it will be part of that process; if it doesn't, it will be told how it's going to look.

Commissioner Wilson said he likes the "come talk to us" aspect of Commissioner Beltran's motion, but it could create a problem, in light of the perceived desire to change the Commission.

Commissioner Kelly proposed amending the motion to review the Secretary's report, comment on it over the next thirty days, and invite Machado and Wolk back to the February meeting where the Commission would have meaningful comments on the report, and it will have established the dialogue with them. Commissioner Beltran called the question; the amendment was not accepted.

Commissioner Beltran called for a roll call vote on his amended motion that had been seconded by Commissioner Ornellas. Ms Aramburu iterated that the motion was to "stay the course" and simultaneously invite Machado and Wolk to the February meeting, at which time the dialogue would continue. **Ayes:** Commissioners Beltran, Ornellas. **Noes:** Chairman McCarty, Vice Chair Ferguson, Commissioners Calone, Coglianese, Johnson, Kelly, Sanders, Shaffer, Sturm, van Loben Sels, and Wilson. The motion was not passed.

Commissioner Coglianese made the motion that the Commission continue this item to its February meeting date (all Commissioners should be prepared for this meeting, having reviewed the report as well as the staff report compiling all the comments received to date), that it make every effort to ensure the entire Commission is present to discuss this important topic, and that it invite the Legislators to come and participate in the discussion, so that it is targeting its comments to the areas for which they'd like to receive input. Commissioner Calone seconded this motion. Commissioner Beltran called for a roll call vote on this motion. **Ayes:** Chairman McCarty, Vice Chair Ferguson, Commissioners Calone, Coglianese, Johnson, Kelly, Ornellas, Sanders, Shaffer, Sturm, van Loben Sels, and Wilson. **Noes:** Commissioner Beltran. The motion was passed.

Ms Aramburu announced that the Commission's special meeting would be held on Thursday, February 26, 2004, 6:30 p.m., at Jean Harvie Community Center.

Chairman McCarty directed staff to draft letters for his signature to Senator Machado and Assemblymember Wolk, inviting them to attend the February meeting.

Vice Chairman Ferguson asked if the agenda items for the Agriculture Committee and the CALFED Committee meetings would be included on February's agenda for discussion. Ms Aramburu said staff could briefly update the Commission on these items.

14. Consider and Adopt Annual Report for 2003

Chairman McCarty said the Commission is required to submit an annual report to the Governor and the Legislature. The 2003 annual report describes the Commission's actions in 2003 and describes some of the issues discussed by the Commission in 2003.

Commissioner Calone made the motion to submit the annual report to the Legislature (incorporating any minor grammatical or typographical corrections that may come to Commissioners' or staff's attention). Commissioner Shaffer seconded the motion. The motion was approved unanimously by voice vote.

15. Report on Acquisitions in the Delta Primary Zone in 2003

Ms Aramburu noted that this is an informational staff report updating the memo on acquisition of lands in the Delta since 1993. There were very few acquisitions in 2003, and while budgetary shortfalls may result in few acquisitions in 2004, she has been informed that there is an acquisition on the Wildlife Conservation Board's February agenda for a 119-acre parcel in the Yolo Bypass. DFG indicates it already holds an easement (and a right of first refusal) on the property. She has asked for additional information on the site.

16. Adjourn

The meeting was adjourned at 9:35 p.m.